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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES E. O'DONNELL ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above cause on October 22, 1936, reversing the decree of the United States District Court for the Northern District of California.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 967) is reported in 91 F. (2d) 14.

JURISDICTION

The decree of the Circuit Court of Appeals sought to be reviewed was entered on October 22,

1936 (R. 1034). On November 19, 1936, petitioner filed a petition for rehearing, which was denied on June 7, 1937 (R. 1035). On August 19, 1937, an order was granted, extending the time for filing a petition for certiorari to and including October 7, 1937 (R. 1035). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The Board of Land Commissioners for California and upon review the District Court for that State had before them in the 1850's a Mexican private land claim to Mare Island in San Francisco Bay, now a Federal naval base. If the Mexican claim failed, an insignificant part of the property, the portion here in controversy, would not be part of the public domain but instead, according to the view taken by the court below, California would secure it under the general terms of the Swamp Lands Act. The United States, while resisting the Mexican claim before the Board of Land Commissioners, purchased the whole property from the claimants in order to insure its use for naval purposes, but continued to resist the entire claim as it felt it was bound to do both under the terms of the statute providing for the adjudication of native titles and in order to defeat the precedent which would be established by the validation of the Mexican grant. But, because of the swamp land feature and the purchase of the property by the United States, the court below now

takes a position in favor of the successors of California, on the ground that the United States consciously and fraudulently engaged in a collusive suit, failed to resist properly the Mexican claim, and allowed decrees to go for the claimants, thus defeating the grant to California and securing for itself the swamp lands in question. Two principal questions are involved:

(1) Whether the decrees rendered by the Board of Land Commissioners for California in 1855 or, on appeal, by the District Court in 1857, in the case of *Bissell and Aspinwall* v. *United States,* confirming a Mexican private land claim purchased by the United States during the proceedings, are immune against collateral attack and are conclusive and binding upon the successors of California claiming under a grant of swamp lands from the United States; and whether, in any event, attack thereon is barred by laches.

(2) Whether upon the undisputed facts the United States has acquired title by adverse possession—a proposition wholly ignored in the opinion below despite the findings of the trial court.

More particularly, the following questions, among others, are involved:

I. CONCLUSIVENESS OF THE DECREES

1. *Total absence of pleadings or proof.*—Whether—in the complete absence of allegations, proof, findings, or specifications of error with respect to any fraudulent collusion on the part of the United States or its agents in resisting the

Mexican land claim—the Circuit Court of Appeals herein erred in assuming that the Government fraudulently colluded with the claimants, without giving the United States notice or an opportunity to bring out the true state of facts, and thus denying the Government its day in court.

2. *Bona fide nature of proceedings.*—Whether the mere precautionary purchase by the United States of land involved in a Mexican land claim, which the Government was resisting and continued to resist before the Board of Land Commissioners, rendered the proceedings non-adversary in character and a fraud upon California which subsequently claimed part of the land in question as swamp land granted to it—notwithstanding the fact that the United States did, and had every reason to, continue a bona fide resistance to the Mexican claim because (a) the terms of its purchase provided that, should the Mexican claim be defeated, the United States could recover the purchase price, (b) Attorney General Cushing was "constrained, in the plainest dictates of public duty" to prosecute the case vigorously through the Federal courts because, as a precedent, the case would affect "many millions worth of land in California, which is otherwise public domain," (c) by act of its legislature, California evidenced its willingness to grant similar swamp lands to the United States without charge in order to secure the creation of a naval base, and (d) the District Court and the State of California were fully advised of the Government's transaction.

3. *The United States a donor, not a trustee.*—Whether, because swamp lands had been granted to California by general statute, the United States, in resisting Mexican land claims under the Act of 1851, was charged with the duties of a trustee for California, whenever swamp lands were involved, and hence held to an unusual and "extra-ordinary burden of proof" to establish its good faith in such cases—although the United States was a mere donor of the swamp lands and had not specified or ascertained what lands were swamp nor yet conveyed legal title, and although the lands in question were claimed by private parties under an earlier Mexican grant, and the officers of the United States were legally bound both to conduct the proceedings here challenged and to acquire sites for naval purposes; and whether, further, under such circumstances, "once the government acquired the interest adverse to California, * * * it can take no advantage from the proceedings before the commission."

4. *Decree binding on California as a grantee from the United States.*—Whether—despite a statutory provision that decrees of the Land Commission or courts shall be "conclusive" between the United States and the claimants under Mexican grants and "shall not affect the interests of third persons" and despite the steady course of decisions of this Court that California, as a grantee of the United States, is not a "third person" under the Act—the assumed bad faith of the

Government would render California a "third person" under a new interpretation of the statute and hence not bound by the decree.

5. *Alleged nonadversary character of proceedings immaterial.*—Whether, assuming that the proceeding before the Board of Land Commissioners was non-adversary in character, the decree of the Board is void for that reason—notwithstanding the fact that this tribunal was legislative and administrative in character, empowered to dispose of private land claims even upon *ex parte* procedure.

II. ADVERSE POSSESSION

6. Whether the Circuit Court of Appeals erred in ignoring the findings of the trial court based upon undisputed evidence to the effect that the United States had been in actual, open, adverse, and exclusive possession of the lands in question since 1853 under claim of absolute ownership and color and claim of title, and in refusing to quiet title in the United States.

STATUTES INVOLVED

The full texts of the Act of September 28, 1850 (c. 84, 9 Stat. 519) granting swamp and overflowed lands of the United States; the Act of March 3, 1851 (c. 41, 9 Stat. 631) creating a board of land commissioners and providing for the determination of private land claims in the State of California; and C. XLIII, Laws of California,

1854–1855, pp. 48–49, consenting to the purchase of Mare Island by the United States, are set forth in the Appendix, *infra*, pp. 35–46.

STATEMENT

The United States brought this suit in the District Court for the Northern District of California to quiet title to a tract of land on Mare Island, Solano County, California, which it has occupied since 1853 as part of the Mare Island Navy Yard Reservation (R. 2–3). The court was asked to cancel a purported patent which had been issued by the United States to California (in compliance with a writ of mandamus from the Court of Appeals of the District of Columbia (R. 37–39), that court stating that "the mere issuance of a patent to California determines no legal or equitable right of the United States in the premises") and another issued by California to one Darlington (R. 17), through whom the defendants herein claimed some interest in the land (R. 13).

As set forth in the bill of complaint, and found by the trial court, on May 20, 1841, the Governor of Mexico granted the entire island to Victor Castro, and Bissell and Aspinwall, having succeeded to Castro's title under the grant, filed their petition before the Board of Land Commissioners seeking confirmation of their claim of title as provided in the Act of March 3, 1851 (R. 5, 164). Thereafter, proceedings were had and on May 8, 1855, the

Board entered a decree confirming claimants' title (R. 5–6, 164–165). The United States appealed from the Board to the District Court of the United States for the District of California, where the decree of the Board was affirmed and the claimants' title again confirmed (R. 7, 166, 167). Because of "accident, oversight, inadvertence or excusable neglect" (R. 21, 290), the decree of the court was unsigned, and a decree, *nunc pro tunc* as of March 2, 1857, was rendered, filed and entered, on April 15, 1930 (R. 20–22, 289–291).

On December 18, 1852, while these proceedings were still pending, Bissell and Aspinwall executed a contract to sell Mare Island to the United States (R. 308–312) and on January 4, 1853, joined in a deed conveying title to the Government for a consideration of $83,491.00 (R. 22–26, 168–169, 302–308). On February 28, 1853, they executed a bond in favor of the United States in the sum of $200,000.00, conditioned upon the validity of their contract and conveyance of an unencumbered fee simple title, it being recited in the bond that they were to save harmless the United States against any adverse claim or title in any "persons or body politic" which might be made within two years and thereafter successfully established (R. 308–312).

Also, while these proceedings were still pending, on May 11, 1854, California consented to the purchase by the United States of the whole island, and in addition granted all its title and interest to and

ded its jurisdiction over certain other swamp nds on the shores of Mare Island. California tatutes, 1854–1855, C. XLIII, pp. 48–49.

On November 6, 1850, President Fillmore re- rved the island from public entry (R. 8, 328– 9) and on February 9, 1853, the Secretary of the avy selected Mare Island for a Navy Yard and a aval Depot, recommending that the "premises be served from public use." His selection was ap- oved and the lands reserved for naval purposes the President on February 11, 1853 (R. 9, 381).

The United States has at all times since Septem- r 16, 1853, been in "actual, open, adverse, and clusive" possession of the land "under claim of ght and of absolute ownership in fee of said land, d under title and color and claim of title", and s placed improvements upon the property here volved which exceed $1,250,000 in value (R. 10– , 171, 172).

The lands here in controversy include only a very all fraction of the island, embracing originally ly 164 acres of swamp or overflowed lands on its ores; but, through accretion, in the course of ore than seventy years this fraction has grown about five hundred acres (R. 163). This has me about in part by "filling in" operations con- cted by the United States (R. 784–785, 796–797). By their amended answer (R. 100–121) defend- ts denied the Government's ownership of the nds here in controversy, and asserted title in emselves as tenants in common (R. 100). By

specific denials they put in issue the existence and validity of the Castro grant (R. 101, 109), the validity of both decrees of confirmation (R. 101–102), the validity of the conveyance to the United States and of the Executive Reservation Orders (R. 102), and the adverse possession by the United States (R. 104).

The amended answer prayed "that the title of these defendants be quieted as against plaintiff" (R. 121); and to support their prayer for such affirmative relief the defendants alleged that the lands in question were swamp lands which passed to California under the Act of September 28, 1850, and that, through conveyance from California's grantee, Darlington (R. 109), and by virtue of the patent from the United States to California, issued in 1928 in obedience to a peremptory writ of mandamus (R. 37), legal title was then vested in them (R. 109–110).

The trial court made findings of fact and conclusions of law in favor of the United States and against the defendants on all of the issues (R. 160–201) and gave a decree granting the relief prayed for by the United States (R. 202–206).

On appeal, the Circuit Court of Appeals for the Ninth Circuit reversed the decree, holding "that the United States has no title to the patented lands in suit and that the title is in and quieted in appellants" (R. 1034). Upon denial of the Government's petition for rehearing, the court amended its original opinion but reaffirmed its

holding (R. 967–1009). Circuit Judge Haney dissented (R. 1009–1034; 1035). The majority opinion is grounded upon the proposition that the United States was, by virtue of the Swamp Lands Act, a trustee for California and that, through its purchase of a deed to the land from Bissell and Aspinwall and its subsequent conduct of the proceedings before the Land Board, it so violated its duties as a trustee that the decrees obtained by Bissell and Aspinwall in the 1850's were void and are now subject to collateral attack. The crucial ground of the majority opinion is reflected in various phrases, such as "pretended controversy", "sham proceeding", nonadversary action", "faked opponent", "pretended adversary proceeding", "ethics involved", "simulated opposition", "reprehensible", "obligations of honesty", "judicial farce", "pretended attorneys", "concealed nonadversary proceedings", "ethical significance", and so forth. Adverse possession is not mentioned.

SPECIFICATION OF ERRORS TO BE URGED[1]

The Circuit Court of Appeals erred:

1. In holding that the United States fraudulently colluded with Bissell and Aspinwall to deprive California of the lands in question.

2. In holding that with reference to these lands the United States was a trustee and California was

[1] Specified errors Nos. 6, 7, 8, 9, and 15 are not urged as a reason for granting the writ of certiorari, but are reserved for argument if the writ should be granted.

its *cestui que trust* and that in the proceedings in *Bissell and Aspinwall* v. *United States* before the Board of Land Commissioners and the District Court it had a trust duty to perform which it deliberately violated in purchasing the property of the claimants in the pending proceedings and improperly defending the interests of its *cestui*.

3. In holding that California was a "third person" under Section 15 of the Act of March 3, 1851 (9 Stat. 631, ch. 41) and that, therefore, California and respondents are not bound by the decree in *Bissell and Aspinwall* v. *United States*.

4. In holding that the proceedings in *Bissell and Aspinwall* v. *United States* were non-adversary and hence subject to collateral attack by California or respondents.

5. In holding the United States subject to "more than ordinary burden of proof" applicable to suits to quiet title, in seeking to have declared void the patent issued by the Secretary of the Interior to California.

6. In holding that the lands in question were subject to the operation of the Swamp Lands Act of September 28, 1850, despite the pendency of the Castro claim.

7. In holding that by the Treaty of Guadalupe Hidalgo, July 4, 1848, ownership of these lands in dispute was transferred to the United States.

8. In holding that on September 28, 1850, by an Act of Congress (9 Stat. 519), the United States transferred to California "the entire equitable in-

terest in the lands" and even "whatever title it had to the swamp and overflowed lands here in question."

9. In holding that the reservations of the lands by President Fillmore, for use as a navy yard, were ineffective.

10. In holding that the signature of the district judge was necessary to the validity of the decree in *Bissell and Aspinwall* v. *United States,* and in holding that the decree was not effective as of March 2, 1857, or May 8, 1855.

11. In failing to hold that the respondents were barred from upsetting the decree in *Bissell and Aspinwall* v. *United States,* because of California's acquiescence in the proceedings and because of the doctrine of laches.

12. In holding that the United States can take no benefit from the decree in *Bissell and Aspinwall* v. *United States,* and that the motion to strike from the evidence the judgment and record in that case should have been granted.

13. In holding that the decrees rendered in *Bissell and Aspinwall* v. *United States,* under the Act of March 3, 1851, c. 41, 9 Stat. 631, were not conclusive as against attack by California or respondents.

14. In failing to hold that the United States had acquired title by adverse possession.

15. In holding that the certified copies of the Mexican grant of Mare Island to Castro were not admissible in evidence; that no proper search for

the original had been made; that there was no evidence of even a possessory right in or possession by Castro; that Castro acquired no title because a duplicate of the grant was not shown to have been filed in the Mexican archives.

16. In failing to affirm the decree of the District Court, in not quieting title in the United States, and in quieting title in respondents.

REASONS FOR GRANTING THE WRIT

I. CONCLUSIVENESS OF DECREES

In holding that the United States had fraudulently colluded with Bissell and Aspinwall to deprive California of the lands in question the court below has so far departed from the accepted and usual course of judicial procedure and decision as to call for an exercise of this Court's power of supervision.

1. Total absence of pleadings or proof of collusion.—The court below decided this cause against the Government by resolving factual questions which were not and are not now at issue in this case. For the first time, although the question had not been raised or considered either in the trial court or when the matter was argued and submitted to the Circuit Court of Appeals, the majority below injected the declaration that the United States was guilty of fraud in the *Bissell and Aspinwall* case—a finding of fact with no evidence to support it. Moreover, though the decree of the Land Commission and the confirmatory decree of

the court were attacked as null and void in respondents' answer (R. 101, 102), and, on various grounds, by their motion to dismiss (R. 142–145), nowhere did their pleadings or proofs suggest any fraud, collusion, bad faith, or concealment. Not one of the sixty-nine assignments of error presented such a contention (R. 909–938). At so late a stage of the proceedings, the United States was wholly prevented from bringing forth true evidence to rebut the court's assumption. Obviously, such a holding, which takes the United States by surprise, denies petitioner its day in court, and condemns the Government without a hearing, constitutes prejudicial and reversible error. Cf. *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 257, 267.

2. Bona fide nature of the proceedings.—But, even upon the record herewith submitted, it appears that the assumption of fraud upon California is wholly untenable. The Castro Grant covered uplands and only an insignificant portion of swamp land and, if the grant were proved invalid, these more valuable upland portions of the island would not revert to California but would become public domain—which the Federal Government was striving to conserve and protect. If the United States could defeat the Mexican claim, under the terms of its purchase it could recover its $83,000 from Bissell and Aspinwall and have the valuable uplands as well, without cost. Finally,

there is small doubt that California, to secure the local establishment of a Federal naval station, would gladly have conceded to the United States these remaining swamp lands of insignificant value, as it did other lands of Mare Island for these same purposes (California Statutes, 1854–55, ch. 43, p. 48).

The opinion of Attorney General Cushing, which the majority of the court below relies upon as evidence of bad faith (R. 992) shows, first, that the Attorney General felt "constrained, in deference to the plainest dictates of public duty", to protect the interests of the United States by an appeal because, as a precedent, the case would affect "many millions worth of land in California, which is otherwise public domain", and to make no admission that the purchase by the United States operated as an assent to the alleged validity of the Castro Grant (8 Op. A. G. 422, 424). Secondly, it is clear that there was no idea of depriving California of its swamp lands since the Attorney General was of the opinion, erroneously, as it appears from subsequent decisions of this Court,[2] that the claim of California would not be settled by the proceedings before the Land Board, and he, therefore, advised that before any expenditure be made towards improving Mare Island, California be asked to cede the claims it might have, if any, to the shores and overflowed land (p. 426). If his

[2] See Point 4, *infra*, pp. 24–26, especially footnote, p. 25.

assumption were correct, California could not be defrauded. Thirdly, it is also clear from his opinion that Cushing's predecessor, Attorney General Crittenden, had thought that Bissell and Aspinwall's claims were of such seriousness that they should be purchased and that he had apparently given no thought to any possible ownership on the part of California (pp. 422–423).

Despite repeated assertions to the contrary in the opinion below, the purchase by the United States from the claimants was disclosed to the District Court, as shown on page eight of the transcript of record in the *Bissell and Aspinwall* case. The omission of this page from the record in the instant case is explained by the fact, as pointed out above, that appellants made no allegations of fraud or collusion, or that the United States had failed to call the court's attention to their purchase of the claimants' interest.

Further evidence of the good faith of the officials is shown in the proceedings in *Bissell and Aspinwall* v. *United States*, which, as was customary before such boards, were not elaborate. The testimony of witnesses Cooper (R. 222–226), McDaniel (R. 244–245), and Mizner (R. 245–246), which the Government brought out, and the cross-examination by the Government of claimants' witness Alvarado, was such as to cast on the minds of the Board very strong suspicions of the validity of the Castro Grant (R. 277). Collusive litigants would not offer such damaging testimony.

But a most important factor is that the court below had before it (Appellee's Brief, Appendix, p. xi) conclusive evidence that California knew and had consented to the purchase of the Bissell and Aspinwall interests in an act of consent passed on May 11, 1854 (California Statutes, 1854–55, c. 43, p. 48), some months prior to the taking of testimony in the *Bissell* case, and a year prior to the decree of the Board. Section 1 consents to the purchase of Mare Island by the United States for naval purposes, and Section 2 cedes certain swamp lands and provides that this consent and grant shall not operate to the "aid or support, directly or impliedly, of any conveyance or bond for title to the United States of the same lands heretofore made"—obviously referring to the Bissell and Aspinwall grant and bond to the United States. There is no intimation anywhere in the proceedings of "any conveyance or bond * * * to the United States * * * heretofore made" other than that of Bissell and Aspinwall (conveyance, R. 302 and bond, R. 308). In other words, if they did not make good their claims in the proceedings on the Mexican claim, the Government would not be precluded by this Act from recovering under that portion of the bond which provided that the grantors "shall also indemnify and save harmless the United States against any adverse claim or title in any other person or persons or *body politic*" (R. 310). [Italics supplied.]

3. The United States a donor, not a trustee.—The opinion of the majority below is grounded upon the untenable legal theory that, under the Swamp Lands Act of 1850, the United States held legal title to the lands in question as trustee for California and that the Government deliberately violated a trust duty to its *cestui que trust* by purchasing Bissell and Aspinwall's interests in the lands while the proceedings before the Board of Land Commissioners and the District Court were still pending and by not properly contesting the Castro claim, and that, therefore, the United States could take no benefit from the decree in the case of *Bissell and Aspinwall* v. *United States.*

In order to set up a trust relationship, an intention to assume the duties of a trustee must be either manifested or fairly implied from the facts (Restatement of the Law of Trusts, pp. 1, 2). No provision in the Swamp Lands Act of September 28, 1850, indicates that the United States either assumed any fiduciary relationship or in any way undertook to hold and protect these lands for the use and benefit of its grantees in the technical manner of a trustee. The Government was merely a donor. It was gratuitously divesting itself of parts of its domain for specific purposes and only to those who would comply with the conditions imposed by the Act. It may have passed on to the States a beneficial interest in the swamp land, but like a vendor of land who has not received pay-

ment (*Jennisons* v. *Leonard,* 21 Wall. 302, 309; cf. 1 *Bogert,* Trusts and Trustees, § 18) or like an ordinary mortgagee holding legal title (*Dobson* v. *Land,* 8 Hare 216, 220; 1 *Bogert,* Trusts and Trustees, § 29) the United States did not become a trustee in any sense.

Thus it has been held that, despite the proviso to Section 2 of the Swamp Lands Act to the effect that the proceeds of swamp lands sold by the State should be applied to reclamation by levees and drains, no trust for this purpose was thereby attached to the lands (*Mills County* v. *Railroad Companies,* 107 U. S. 557). Similarly, under an 1855 statute providing that the proceeds of swamp lands sold by the United States subsequent to the passage of the 1850 statute should be paid over to the States, it was held that "the proceeds of the swamp lands are not subject to a property trust, * * * in the hands of the United States" in a sense which would preclude the United States from setting off a debt against the claim of a State to such proceeds (*United States* v. *Louisiana,* 127 U. S. 182, 191).

No authority has been found to intimate in any way that the United States was charged by the Act with the obligations of a trustee. Certainly *Brown* v. *Hitchcock,* 173 U. S. 473; *Orchard* v. *Alexander,* 157 U. S. 372; *Hoyt* v. *Latham,* 143 U. S. 553; *Chicago &c. Ry.* v. *Des Moines &c. Ry.,* 254 U. S. 196; *Mason* v. *United States,* 17 Wall. 67, cited by the court below (R. 991–992), give no support to its

assumption. Whether or not the United States was charged with the duties of a trustee for the benefit of its grantees under the Act in question or acts similar to it was not involved in any of these cases and they are clearly not in point.

Moreover, there is nothing in the Act of March 3, 1851, providing proceedings for "ascertaining and settling private land claims in the State of California" (Sec. 1), from which it may be said that the United States assumed the role of trustee in these proceedings as to "swamp and overflowed" or any other kinds of lands. Its sole purpose was to discharge the political obligation, imposed by the law of nations and assumed by the United States in the Treaty of Guadalupe Hidalgo, to protect property rights that had vested in the inhabitants prior to the acquisition of California. The United States had no other interest in the proceedings. *Beard* v. *Federy*, 70 U. S. 478; *More* v. *Steinbach*, 127 U. S. 70; *San Francisco* v. *LeRoy*, 138 U. S. 656; *Knight* v. *U. S. Land Association*, 142 U. S. 161.

Accordingly, it is submitted, the attempt of the majority of the court below to erect a trust relationship must fail completely and its conclusion that petitioner "can take no advantage from the proceeding before the Commission" (R. 992) is consequently erroneous. But even if the Circuit Court were correct in its view that the United States was a trustee, the holding that the United States could take no benefit from the decree is unsound. Fraud, bad faith, and concealment were

not alleged nor proved (Point 1, *supra*). There was convincing evidence of good faith on the part of the United States in the whole transaction, of consent by California to the sale, and disclosure to the court (Point 2, *supra*).

Conceding *arguendo* all that the court below assumed, California and its successors, as *cestuis*, could not stand by for an undue length of time and then hope to avoid the decree. The United States has been in open and undisputed possession of the land since 1853. California had knowledge of the purchase and of the use of the island as a naval base. The District Court rendered its decree in *Bissell and Aspinwall* v. *United States* in 1857.[3] In reliance on these facts the United States has improved the land and erected various structures thereon. A *cestui* who has acquiesced in any conduct of his trustee may not thereafter set it up as a breach of trust (4 *Bogert*, Trusts and Trustees,

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[3] The failure of the Court of Appeals to apply the doctrine of laches may, perhaps, be due to its failure to recognize this unsigned decree. But it is elementary that the signature of a judge is not necessary to make a decree valid in the absence of a statute requiring signature. Many cases are collected in 33 C. J. p. 1212, sec. 152; 15 R. C. L. p. 585, sec. 21. Indeed, statutory requirements have been held merely directory. *Secombe* v. *Steele*, 20 How. 94, 102 (statute of Territory of Montana); *United States* v. *Stoller*, 180 Fed. 910, 912–913 (E. D. Wash.) (United States statute regarding naturalization certificates). No Federal statute requiring the signature of the District Judge has been found, or cited by the court below. The unsigned decree was valid from the date of entry.

secs. 941, 942), much less a *cestui*, such as California, who has taken action to preserve the rights of the United States in the transaction. Moreover, respondents or their predecessors in interest did not institute mandamus proceedings to procure the patent until *Work* v. *United States*, 23 F. (2d) 136 (App. D. C., 1927), and indeed did not even attempt court proceedings prior to the unsuccessful ejectment action, *Sawyer* v. *Osterhaus*, 212 Fed. 765 (N. D. Cal.), instituted in 1910, see *Work* v. *United States*, *supra*, p. 137.[4] Under these circumstances, having slept too long on their rights, if any, equity will not permit respondents to attack the decree, *Hume* v. *Beale's Executrix*, 17

[4] The court below takes comfort from the issuance of a patent to California for the lands here in controversy, in response to a peremptory writ of mandamus from the courts of the District of Columbia, but in concluding that this patent suggests that a trust relationship existed in 1850 and that "in seeking to have declared void a patent from the United States, which by reverting to September 28, 1850, evidences a then grant of full legal title to the lands, the United States has a more than ordinary burden of proof" the Circuit Court of Appeals has completely disregarded *Work* v. *United States*, 23 F. (2d) 136 (App. D. C., 1927). The Secretary of the Interior had refused to certify the lands to California on the ground that in 1850 they were owned by a Mexican grantee. Respondent, James E. O'Donnell, sought a writ of mandamus, which was granted by the trial court without consideration of the Secretary's objections. In affirming the judgment, the Court of Appeals held that the trial court "was right in laying aside all consideration of the controversy between relator and the United States as to title", and it expressly asserted that "the mere issuance of patent to California determines no legal or equitable right of the United States in the premises" (p. 138).

Wall. 336, 348; *Speidel* v. *Henrici,* 120 U. S. 377, 387; *Hammond* v. *Hopkins,* 143 U. S. 224, 250; *Wetzel* v. *Minnesota Ry. Co.,* 169 U. S. 237; *Clark* v. *City of Chicago,* 70 F. (2d) 172 (C. C. A. 7th).

4. Decree binding on California as a grantee of the United States.—Notwithstanding the views of the majority below as to the effect of the decree, the statute under which the Land Board and District Court acted in *Bissell and Aspinwall* v. *United States* specifically provides in Section 15 that the decrees of the Board and the courts shall be "conclusive" between the United States and the claimants under Mexican grants but "shall not affect the interests of third persons." The steady course of decision of this Court has determined that California, as a grantee from the United States, was not a "third person" under the statute. *Knight* v. *U. S. Land Association,* 142 U. S. 161; *San Francisco* v. *LeRoy,* 138 U. S. 656; *Beard* v. *Federy,* 70 U. S. 478; *More* v. *Steinbach,* 127 U. S. 70.

The reason for this rule, which has been consistently adhered to by this Court and the courts of California, is summed up accurately by Chief Justice Field in *Leese* v. *Clark,* 20 Cal. 387, 426, as follows:

> The State and individuals hold whatever property they possess which formerly belonged to the Mexican Government, through the United States, and necessarily, therefore, in subordination to the action of the

> United States whilst they held it, and in subordination to any action with respect to such property which they covenanted or were bound to take upon its acquisition. The legal effect of the action of the Government is the same as if such action had been taken the very day upon which the Mexican authorities were displaced.

Indeed, in reply to appellees' petition for a rehearing in the court below, appellants conceded this to be foreclosed as a general rule of law (R. 1026).

Despite the appellant's concessions and the clear-cut pronouncements by this Court that the United States "and all parties claiming under it by titles subsequently acquired"* (*Knight* v. *U. S. Land Association, supra,* p. 184) are not "third persons" under the Act, the court below concluded that the interpretation of the term "third persons" should be changed to include California because of the assumed bad faith of the United States as an alleged trustee in conducting a so-called "pretended adversary proceeding." No canon of interpretation has been found which justifies this departure.

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* By "title subsequent" is meant titles derived subsequent to the Treaty of Guadalupe Hidalgo; persons claiming under a title derived from the United States subsequent to the treaty are bound by a decree of the Board of Land Commissioners as fully as thought their title were based on grants subsequent to the proceedings. *Beard* v. *Federy*, 3 Wall. 478, 491–493; *United States* v. *Coronado Beach Co.*, 255 U. S. 472, 487–488, and cases cited.

Lord v. *Veazie*, 8 How. 251, on which the majority opinion relies, lends no support to such an interpretation, for it merely involved the propriety of declining to consider a collusive suit and had nothing to do with the interpretation of a statute. It does not change the fact that California claimed title through the United States and, hence, was not a "third person" under the interpretation put on the statute by the steady course of decisions of this Court.

5. Alleged nonadversary character of proceedings immaterial.—The court below erred and disregarded applicable decisions of this Court, in holding (R. 999–1004) that the acquisition of the land from Bissell and Aspinwall left no issue of which the Land Board or District Court could take jurisdiction. The purposes of the Act conferring authority upon the Board and the Court were "ascertaining and settling private land claims in the State of California", a matter requiring no controversy. The majority's view (R. 1000) that the Board's duty was to ascertain and settle the claim as between the two adverse parties, ignores applicable decisions of this Court.

The Board was an administrative tribunal. *United States* v. *Ritchie*, 17 How. 525; *Grisar* v. *McDowell*, 6 Wall. 363, 375; *United States* v. *Fossatt*, 21 How. 445. Unless the statutes under which it was created required adversary proceedings, none were necessary. The provision in the Act for the attendance of the "agent" of the United States

looked only to the presence of a representative of the Government to "superintend its interests in the premises" (Sec. 4), that is, to protect the Government from the assertion of invalid or fraudulent claims.

That this Court does not think adversaries were necessary is clear. In *Meader* v. *Norton*, 11 Wall. 442, 451–52, the Court said:

> Applicants for such confirmations were required to present their claims to the commissioners when sitting as a board, but the act of Congress made no provision for notice to any adverse claimant, and the proceedings before the commissioners were wholly ex parte unless opposed by the district attorney.

And in *United States* v. *Fossatt, supra*, the Court said (pp. 450–451):

> The United States did not appear in the courts as a contentious litigant; but as a great nation, acknowledging their obligation to recognise as valid every authentic title, and soliciting exact information to direct their executive Government to comply with that obligation.

For other decisions approving the determination of private land claims without adversary proceedings, see instances where statutes provided simply for a final determination of claims by Congress subsequent to administrative investigations and reports, by a special commission (*Henderson* v. *Poindexter*, 12 Wheat. 530) or by a surveyor gen-

eral (*Tameling* v. *U. S. Freehold and Emigration Co.*, 93 U. S. 644, 662).

As authority to support the contrary view, the court below was obliged to rely on general language from cases in which the question of the necessity of a controversy was not involved. See *Beard* v. *Federy*, 3 Wall. 478, 480; *Grisar* v. *McDowell*, 6 Wall. 363, 374; *United States* v. *Throckmorton*, 98 U. S. 61; *St. Louis* v. *Rutz*, 138 U. S. 226, 250.

Finally, so far as the proceedings before the Board are concerned, merely because Congress has provided for an appeal to constitutional courts (where adversary procedure may be a requisite and hence the appeal taken by the United States may have been ineffective), it does not follow that the decree of the administrative tribunal will also fail (*Keller* v. *Potomac Electric Co.*, 261 U. S. 428; *Radio Comm.* v. *General Elec. Co.*, 281 U. S. 464; *Postum Cereal Co.* v. *California Fig Nut Co.*, 272 U. S. 693; *Ex Parte Bakelite Corp.*, 279 U. S. 438), particularly where, as here, the tribunal is set up to determine political or international obligations, and where to allow its decrees to be assailed at this late date will unsettle other decrees obtained in the numerous "ex parte proceedings" under the Act.*

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* The situation here is different from that disclosed in *Muskrat* v. *United States*, 219 U. S. 346. The natural presumption there that a constitutional court is the proper tribunal to decide a constitutional question, does not apply here where the problem is the administrative determination of political obligations. There is nothing in the present Act to

So far as the decree of the District Court in *Bissell and Aspinwall* v. *United States* is concerned, even if adversary proceedings were necessary (though see particularly *Schmertz Wire Glass Co.* v. *Western Glass Co.*, 178 Fed. 977, 986–988 (C. C. N. D. Ill.); 185 Fed. 788 (C. C. A. 7th)), here, as has been previously pointed out, the parties were vitally interested in having an opposite result reached in the decree, and the United States felt bound to resist the claim in order to defeat a precedent which would affect "many millions worth" of public domain (Point 2, *supra*, p. 15 ff). And in any event, even if the decree might originally have been attacked for want of an adversary proceeding, in this case the acquiescence of the respondents and their predecessors in interest, and their long delay in instituting proceedings, precludes any attack on the decree now. (See Point 3, *supra*, at pp. 22–24.)

II. ADVERSE POSSESSION

In disregarding the trial court's finding that the United States had acquired title to the lands in question by adverse possession (R. 171, 179, 197),

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indicate that the court should reach a different result from that in *Keller* v. *Potomac Elec. Co.*; *Radio Comm.* v. *General Electric Co.*; *Postum Cereal Co.* v. *California Fig Nut Co.*; *Ex Parte Bakelite Corp.*, cited in the text, and the court below should have so held.

the Circuit Court of Appeals has ignored general principles of law and applicable decisions of this Court, and has also ignored California statutes and decisions governing questions of local law.

The bill of complaint alleges that the United States is the owner of the lands in question and that it has occupied them at all times since 1853 as a Navy Yard for military and naval purposes (R. 3–4). Its possession is alleged to have "at all times been actual, open, adverse and exclusive and under claim of right and of absolute ownership in fee of said land, and under the title and color and claim of title" (R. 10–11). These allegations were denied by the defendants (R. 104), evidence in support of them was received (R. 328–329, 379–383, 583–590, 784–786, 800, 838), and the trial court found (R. 171) that "the possession of the United States has at all times been actual, open, adverse and exclusive and under claim of right and absolute ownership in fee of said land, and under the title and color and claim of title." See also Findings XXI and XLVIII (179, 197). These Findings were assigned as error (R. 912, 918, 923, 927), but the court below ignored them entirely, possibly because counsel for the United States did not press the point in argument though the point was argued in the brief of appellants.

Under Section 1007 of the California Civil Code,[1] read in conjunction with the California Code of

[1] This suit is not affected by the recent amendment of Section 1007 of the Civil Code by Cal. Stat. 1935, p. 1592. The

Civil Procedure, Sections 318–319, 321–325, as required by *Akley* v. *Bassett,* 189 Cal. 625, 645, the United States acquired a "perfect title" by prescription, *Wutchumna Water Co.* v. *Ragle,* 148 Cal. 759, 764, when it occupied the land adversely for five years. Possession under a claim of title founded upon a written conveyance or court judgment is deemed adverse where the land "has been usually cultivated or improved." California Code of Civil Procedure, Sections 322, 323. Even where title is not founded on a written instrument or judgment, such possession is adverse. California Code of Civil Procedure, Section 325.[8]

Sufficient compliance with these sections is shown by the finding of the trial court (No. VIII, R. 171) and the undisputed evidence that the possession of the United States has at all times been actual, open, adverse and exclusive, under claim of title supplied by the Presidential reservations, the deed from Bissell and Aspinwall, the decision of

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amendment is prospective in its language; it precludes the acquisition of a prescriptive title against a county, city, etc., and does not apply to private owners or patentees; and its effect is limited to "possession by any person, firm or corporation."

[8] This section contains a proviso that the party have paid all state, county, and municipal taxes levied and assessed upon the land, but it is immaterial here that no taxes have been paid since none were assessed (R. 477), (*Spargur* v. *Heard,* 90 Cal. 221, 230; *Heilbron* v. *Last Chance Water Ditch Co.,* 75 Cal. 117), and since in any event the United States is not subject to property taxation by the States (*Van Brocklin* v. *Tennessee,* 117 U. S. 151, 180).

the Board of Land Commissioners and the confirmatory order and decree of the District Court, and that the lands "during such period of occupancy of the complaint, have been improved for military and naval purposes by the construction of buildings and improvements thereon."

Since the decision of this Court in *Stanley* v. *Schwalby,* 147 U. S. 508, there has been no doubt of the Government's right to acquire title by adverse possession; and adverse possession is an adequate basis for a suit in equity by the United States to quiet title. *United States* v. *Oregon,* 295 U. S. 1, 25. The instant case presents all the features of adverse possession relied on in *United States* v. *Oregon, supra:* acquisition of title by the United States; which was never subsequently conveyed away in terms; continued claim of title and continued possession without any interference thereof (R. 171); an executive order of reservation constituting an assertion of title and possession (R. 169–170, 379–381); exercise of control by the United States, in the erection of various structures (R. 171–172).

Application of the doctrine of adverse possession is not precluded by any suggestion that at one time the United States held the lands as trustee for California under the Act of September 28, 1850. The courts both of the United States and of California hold that a trustee can acquire prescriptive title to the land held in trust after open and unequivocal repudiation of the trust and actual knowledge

thereof by the *cestui que trust*. *Speidel* v. *Henrici*, 120 U. S. 377; *Dugan* v. *O'Donnell*, 68 Fed. 983 (C. C. N. D. Calif.); *Norton* v. *Bossett*, 154 Cal. 411; see *Zeller's Lessee* v. *Eckert*, 4 How. 288, 295; *Willison* v. *Watkins*, 3 Pet. 42, 47–48; *Love* v. *Watkins*, 40 Cal. 547, 568–572. The facts, heretofore discussed, clearly show that the United States unequivocally repudiated California's claim, by claiming and using the land for its own naval and military purposes, and that California had knowledge of this repudiation.

IMPORTANCE OF THE ISSUES HEREIN

It is of tremendous importance both to the United States and to California land owners generally that this petition be granted. The particular lands involved are vitally important to the United States because of their strategic value as a naval base. The United States has been in undisputed possession for seventy-three years. It has spent $2,000,000 developing these lands as an integral part of the Mare Island naval base (R. 1009), and we are informed that expenditures on other parts of the island exceed $40,000,000. Their loss will impair the utility of the entire base. In addition, the title of the United States to 6,000 acres of adjacent lands is at issue in *United States* v. *Stewart* (Equity No. 2685–5, D. C., N. D. Calif. S. D.) and the trial judge in that case has announced that his decision will be determined by the ultimate outcome of this case.

The decision below creates wholesale uncertainty with respect to California land titles. Eighty-six years ago Congress set up a Board of Land Commissioners to pass upon the validity of land held or claimed under Mexican grants. This Court has frequently held that a determination by the Commissioners was conclusive against the United States, California, or anyone claiming under either of them. Now, the Circuit Court of Appeals declares that, at least in some ill-defined circumstances, the decisions of the Land Commissioners are not conclusive against California or persons claiming under it. If this decision stands, holders of title unquestioned for generations are threatened with harrassment and possible eviction.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

OCTOBER 1937.

APPENDIX

Act of September 28, 1850, c. 84, 9 Stat. 519:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

SEC. 2. *And be it further enacted,* That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted,* That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation",

shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. 4. *And be it further enacted,* That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known as designated as aforesaid, may be situated.

Approved, September 28, 1850.

Act of March 3, 1851, c. 41, 9 Stat. 631:

Chap. XLI. An Act to ascertain and settle the private Land Claims in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

SEC. 2. *And be it further enacted,* That a secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

SEC. 3. *And be it further enacted,* That such clerks, not to exceed five in number, as

may be necessary, shall be appointed by the said commissioners.

SEC. 4. *And be it further enacted,* That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interests of the United States in the premises, to continue him in such agency as long as the public interest may, in the judgment of the President, require his continuance, and to allow him such compensation as the President shall deem reasonable. It shall be the duty of the said agent to attend the meetings of the board, to collect testimony in behalf of the United States, and to attend on all occasions when the claimant, in any case before the board, shall take depositions; and no deposition taken by or in behalf of any such claimant shall be read in evidence in any case, whether before the commissioners, or before the District or Supreme Court of the United States, unless notice of the time and place of taking the same shall have been given in writing to said agent, or to the district attorney of the proper district, so long before the time of taking the deposition as to enable him to be present at the time and place of taking the same, and like notice shall be given of the time and place of taking any deposition on the part of the United States.

SEC. 5. *And be it further enacted,* That the said commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy,

whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

SEC. 6. *And be it further enacted,* That the said commissioners, when sitting as a board, and each commissioner at his chambers, shall be, and are, and is hereby, authorizetl to administer oaths, and to examine witnesses in any case pending before the commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

SEC. 7. *And be it further enacted,* That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, or of any claimant or his counsel, to issue writs of subpoena commanding the attendance of a witness or witnesses before the said board or any commissioner.

SEC. 8. *And be it further enacted,* That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons

on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

SEC. 9. *And be it further enacted,* That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the United States, to present a petition to the District Court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a deraignment of the claimant's title, together with a transcript of the report of the board of commissioners, and of the documentary evidence and testimony of the witnesses on which it was founded; and such petition, if presented by the district attorney in behalf of the United States, shall be accompanied by a transcript of the report of the board of commissioners, and of the papers and evidence on which it was founded, and shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, a copy of which petition, if the same shall be presented by a claimant, shall be served on the district attorney of the United States, and, if presented in behalf of the United States, shall be served on the claimant or his attorney; and the party upon whom such service shall be made shall be bound to answer the same within a time to be prescribed by the judge of the District Court; and the answer of the

claimant to such petition shall set forth fully the nature of the claim, and the names of the original and present claimants, and shall contain a deraignment of the claimant's title; and the answer of the district attorney in behalf of the United States shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, copies of which answers shall be served upon the adverse party thirty days before the meeting of the court, and thereupon, at the first term of the court thereafter, the said case shall stand for trial, unless, on cause shown, the same shall be continued by the court.

SEC. 10. *And be it further enacted,* That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme Court, in case the judgment of the District Court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

SEC. 11. *And be it further enacted,* That the commissioners herein-provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadaloupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the

Supreme Court of the United States, so far as they are applicable.

SEC. 12. *And be it further enacted,* That to entitle either party to a review of the proceedings and decision of the commissioners hereinbefore provided for, notice of the intention of such party to file a petition to the District Court shall be entered on the journal or record of proceedings of the commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the District Court within six months after such decision has been rendered.

SEC. 13. *And be it further enacted,* That all lands the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims the said surveyor-general shall have the same power and authority as are conferred on the register of the land

office and receiver of the public moneys of Louisiana, by the sixth section of the act "to create the office of surveyor of the public lands for the State of Louisiana", approved third March, one thousand eight hundred and thirty-one: *Provided always,* That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided, further,* That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the said lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the commissioner of the general land office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

SEC. 14. *And be it further enacted,* That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town,

or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six, being duly proved, shall be prima facie evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village.

SEC. 15. *And be it further enacted,* That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

SEC. 16. *And be it further enacted,* That it shall be the duty of the commissioners herein provided for to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

SEC. 17. *And be it further enacted,* That each commissioner appointed under this act

shall be allowed and paid at the rate of six thousand dollars per annum; that the secretary of the commissioners shall be allowed and paid at the rate of four thousand dollars per annum; and the clerks herein provided for shall be allowed and paid at the rate of one thousand five hundred dollars per annum; the aforesaid salaries to commence from the day of the notification by the commissioners of the first meeting of the board.

SEC. 18. *And be it further enacted,* That the secretary of the board shall receive no fee except for furnishing certified copies of any paper or record, and for issuing writs of subpoena. For furnishing certified copies of any paper or record, he shall receive twenty cents for every hundred words, and for issuing writs of subpoena, fifty cents for each witness; which fees shall be equally divided between the said secretary and the assistant clerk.

Approved, March 3, 1851.

California Statutes, 1854–1855, pp. 48–49, Chapter XLIII (Passed May 11, 1854):

AN ACT declaring the Consent of the Legislature of the State of California to the Purchase by the United States of Signor, or Mare Island; to relinquish the Title and Interest of the State in overflowed portions of said Island, and to vest the Jurisdiction over the same in the United States, for the purposes therein specified. [Passed May 11, 1854.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The consent of the State of California is hereby given to the purchase

by the United States of a certain tract or parcel of land situated in the county of Solano, known as Signor or Mare Island, for the purpose of erecting and maintaining thereon such arsenals, magazines, docks, dock-yards, and other military and naval structures as may be required for the use of the Government of the United States.

SECTION 2. The title and interest of the State of California to, and in such portions of the Island described in the preceding section as are overflowed beach, or swamp lands, on the eastern shore of the said Island, from the southern point thereof to a parallel intersecting the northern point of the highlands, and extending into the waters of the bay or straits, washing the eastern shore of said highlands of the Island to ship channel, is hereby relinquished and granted to the United States for the purposes specified in the preceding section; and the jurisdiction of such part of said Island, and the overflowed portions of the eastern shore thereof as are south of a parallel intersecting the northern point of the highlands, is hereby ceded by the State of California to the United States for the purposes aforesaid: *Provided,* That the consent to the purchase, and the grant and relinquishment of title, by this State to the United States, in this Act contained, shall not be construed in aid or support, directly or impliedly, of any conveyance or bond for title to the United States of the same lands heretofore made, or which may hereafter be made, by any person or persons, company or corporations, or as a recognition on the part of the State of California of any claim, title or grant heretofore asserted or set up, or which may hereafter be asserted or set up by any person or persons, company or corporation.

SECTION 3. The jurisdiction ceded to the United States in the last preceding section is upon the express condition that the State of California shall retain a concurrent jurisdiction with the United States in and over the said tract of land, so far as that civil process in all cases, and such criminal process as may issue under the authority of the State of California, against any person or persons charged with crime committed within or without said tracts of land, may be executed therein in the same way and manner as if this jurisdiction had not been ceded, except so far as such process may effect any of the real or personal property of the United States within the said tract of land; and all the lands and tenements within the limits aforesaid shall be, and continue forever hereafter, exonerated and discharged from all taxes, assessments, and other charges which may be imposed by authority of this State.

SECTION 4. The relinquishment made, the jurisdiction ceded, and the exemption from taxation granted by this Act, shall continue so long as the premises herein specified shall remain in the occupancy of the above United States of America, for the purposes mentioned in the first section of this Act, and no longer.

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